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GEORGE H. COFFELL
Claims Representative

November 26, 1997

Office of Secretary
Federal Communications Commission
1919 M Street
Washington, DC 20554

RECEIVED
NOV 28 1997
COMM. L. ROOM

RE: *In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities*, MM Docket 97-182

Dear Sir or Madam:

Enclosed is an original and nine copies of the reply comments of the City of Huntsville in the above-referenced proceeding.

Please contact be at (205)532-7301 should you have any questions. Thank you for your attention in this matter.

Sincerely,



K. Claudia Anderson
Assistant City Attorney

KCA

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NOV 28 1997
COMM. L. ROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Preemption of State and Local)
Zoning and Land Use Restrictions)
on the Siting, Placement and)
Construction of Broadcast Station)
Transmission Facilities)

MM Docket No. 97-182

NOV 28 1997

REPLY COMMENTS OF THE CITY OF HUNTSVILLE, ALABAMA
308 Fountain Circle
Huntsville, Alabama 35801

The Federal Communications Commission ("Commission") initiated a *Notice of Proposed Rule Making* ("NPRM") in the above-referenced matter in response to a *Petition for Further Notice of Proposed Rule Making* ("Petition") filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television ("Petitioners"). The *Petition* proposes a preemption rule that would substantially curtail the ability of state and local governments to exercise zoning authority over broadcast service facilities. On October 30, 1997, the Alabama Broadcasters Association ("Association") submitted *Comments of the Alabama Broadcasters Association* ("Comments") in response to the *NPRM*. Pursuant to 47 C.F.R. § 1.415, the City of Huntsville, Alabama, by its assistant city attorney, hereby submits its *Reply Comments* to the Association's *Comments*.

I. INTRODUCTION

The City of Huntsville is a municipal corporation located in the state of Alabama. Pursuant to its state enabling legislation, Huntsville has enacted a set of zoning regulations that divide the city, essentially, into residential, commercial, and industrial districts. Each district defines the uses

permitted as a matter of right within its boundaries and those that will be permitted as special exceptions. In addition, the zoning ordinance establishes various regulations related to such things as density controls, parking requirements, signs, and landscaping.

On January 23, 1997, the City Council for the City of Huntsville adopted amendments to the City's zoning ordinance that address various wireless telecommunications services such as personal wireless services, amateur radio operations, and broadcast services, which are defined by the amending ordinance to include FM radio services and UHF and VHF broadcast services.¹ The amendments are tailored to accommodate the requirements of federal law, the technical parameters of each service, and the zoning concerns implicated by these particular uses. The Broadcasters Association in its *Comments* uses the City of Huntsville's regulations as an example of some of the requirements "faced" by its members.²

The City of Huntsville hereby responds to each of the concerns raised by the Broadcasters Association in an attempt to prevent the promulgation of rules preempting local zoning laws.

II. DISCUSSION

The Commission, in undertaking the instant proceeding, has recognized that it must determine whether and to what extent to preempt state and local land use regulations that present an impediment to radio and television broadcast services generally and to the rapid deployment of

¹A copy of City of Huntsville, Alabama Ordinance No. 96-1008 is attached hereto as Appendix "A."

²*Comments of the Alabama Broadcasters Association to Notice of Proposed Rule Making, In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities, MM Docket No. 97-182 at p. 3 [hereinafter Comments].*

digital television services (“DTV”) specifically.³ The Petitioners propose a preemption rule that would substantially limit a local authority’s ability to regulate the siting, placement and construction of broadcast facilities. The proposed rule includes prescribed time limits within which local zoning authorities must respond to an application for the placement, modification or construction of broadcast service facilities; an express preemption of regulations relative to the environmental or health effects of radio frequency emissions, interference, and tower marketing and lighting requirements; and the preemption of any regulation that is not related to a specifically stated health or safety objective.⁴ The Commission should refrain from imposing such unnecessary and stringent restrictions on local zoning legislation because legitimate zoning laws do not frustrate federal objectives relative to broadcast services.⁵

In its efforts to arrive at the appropriate decision, the Commission requests a “detailed record of the nature and scope of broadcast siting issues, including delays and related matters encountered by broadcasters, tower owners and local government officials.”⁶ Although the Association’s *Comments* complain of time delays and unreasonable denials of siting applications, no specific

³*Notice of Proposed Rule Making*, In the Matter of Preempting of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities, MM Docket No. 97-182 at p. 1 [hereinafter *NPRM*].

⁴*NPRM* at pp. 3 & 4.

⁵*See NPRM* at p. 7 (recognizing need to refrain from interfering with the ““legitimate affairs of local governments when they do not frustrate federal objectives”” (citations omitted)).

⁶*NPRM* at p. 8.

examples of such obstacles are included.⁷ The Association also notes how time-consuming the process is.⁸ Again, no specific examples are given, only a general conclusory statement. The only specific example given in its *Comments* is the reference to the City of Huntsville's recently adopted zoning amendments that regulate wireless communications facilities. However, these comments do not give the Commission an accurate or complete picture of that ordinance.

The "25 page Ordinance" that the Association references⁹ is a recent amendment to Huntsville's zoning ordinance that was adopted in January of 1997. As the Commission will note, the amendments contained in the 25-page Ordinance regulate a variety of wireless communications facilities including personal wireless service facilities, amateur radio operations, and broadcast service facilities. The entire 25-page Ordinance is not dedicated solely to regulating broadcast service facilities. Only a small portion addresses broadcast towers.¹⁰

According to the recently adopted amendments, broadcast towers that support one or more UHF or VHF television or FM radio broadcast antenna or other such antenna are permitted in any district as a special exception to the zoning ordinance, including residential districts.¹¹ All a tower owner need do is meet the conditions imposed by the ordinance. If a property owner that wants to erect a broadcast tower on his property has a hardship in meeting any requirement imposed on the

⁷See *Comments* at p. 3.

⁸*Comments* at p. 3.

⁹*Comments* at p. 3.

¹⁰See City of Huntsville Ord. No. 96-1008 [hereinafter *Ordinance*], Section 92.5.3 (21).

¹¹*Ordinance*, Section 92.5.3 (21).

use, he may seek to obtain a variance from the Board of Zoning Adjustment at the same time he seeks its approval for the special exception.

There are approximately thirteen conditions which a broadcast facility must meet in order to be permitted to construct a new tower in any district.¹² The Association specifically mentions four in its *Comments*.¹³ Two of the highlighted conditions deal with the Ordinance's requirements concerning co-location,¹⁴ i.e., constructing new towers to accommodate multiple users. In view of the emerging telecommunication technology and the goal of rapid deployment, it is not unreasonable or obstructive to require that new towers be built to accommodate multiple users and, if so built, imposing the condition that the tower owner cannot constructively prevent shared use by imposing unreasonable lease terms or other such obstacles. In fact, the FCC has encouraged co-location, where technologically feasible, in the context of personal wireless service facilities.¹⁵ Moreover, with the expected proliferation of telecommunication towers and facilities, land that is suitable and available may be in limited supply. If telecommunication service providers are allowed to construct and occupy a tower alone, land that is suitable and available may become scarce. In that case, it would not be a matter between a service provider and the municipality, but between providers of telecommunication services themselves, who will be competing for suitable land. Allowing

¹²See *Ordinance*, Section 92.5.3 (21).

¹³*Comments* at p. 3.

¹⁴See *Ordinance*, Section 73.20.16; Section 73.20.17 (7); 92.5.3 (21) (a).

¹⁵*FCC Fact Sheet #2*, National Wireless Facilities Siting Policies, Wireless Telecommunications Bureau, September 17, 1996 at p. 8.

municipalities to require some type of co-location does not frustrate federal objectives; rather, it promotes the goal of rapid deployment while minimizing impact to the local landscape.

A third concern voiced by the Association is that “the Ordinance stipulates that there may never be any more antennas than there are television licensees in the City.”¹⁶ This statement is incorrect. The Ordinance states that there should never be more than one tower, not antenna, per licensee.¹⁷ If a new tower is approved, then the existing tower must be removed. The *Petition* itself contemplates modification of existing towers, consolidation onto an existing tower, or relocation of existing facilities.¹⁸ Huntsville’s Ordinance merely requires that a tower owner who is building a new tower build it so that the new tower accommodates all of its operations, digital and analog, and then remove the old one. Such a requirement does not impinge upon the federal goals of rapid deployment. Rather, it promotes valid zoning concerns.

Finally, the Association points out that the Ordinance requires “detailed landscaping.”¹⁹ It is difficult to see how requiring a commercial user to provide a minimum amount of landscaping is burdensome or unreasonable or, indeed, implicates any concerns the Commission might have with regard to the rapid deployment of transmission facilities.

The fact that the Association would comment on such an innocuous requirement as landscaping is an example of the unreasonable expectations of its members. As evidenced by the

¹⁶*Comments* at p. 3.

¹⁷*Ordinance*, Section 92.5.3 (21) (b).

¹⁸*See NPRM* at p. 3 (discussing time limits based on needs of broadcasters).

¹⁹*Comments* at p. 3.

Petition itself, broadcasters want to limit a municipality's ability to regulate tower siting according to the health and safety concerns. According to the *Petition*, aesthetics and the preservation of property values could not serve as a reason for denying a siting request.²⁰ The preservation of property values and the promotion of aesthetics are legitimate and important goals of zoning. The United States Supreme Court has ruled that zoning is justified as a police power, asserted for the public welfare.²¹ Furthermore, the United States Supreme Court has declared: "The concept of public welfare is broad and inclusive The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."²²

In its *NPRM*, the Commission has determined that rapid construction would promote DTV's competitive strengths, thereby spurring the American economy.²³ If economic justification is a criterion for approving the rule, it should equally be a consideration for allowing local governments some measure of regulation over the use of land within its community. The benefits associated with promoting aesthetics and protecting property values often outweigh the minimal costs imposed on the tower owner. Moreover, one way a consumer is able to afford to buy products in the market

²⁰See *NPRM* at p. 4.

²¹Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning*, § 1.01 at 1-10 to 1-12 (4 ed.1997) (citing *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) [hereinafter Ziegler]).

²²*Berman v. Parker*, 348 U.S. 26, 33 (1958); see also Ziegler at 1-12 (quoting *Berman v. Parker* and discussing its significance).

²³*NPRM* at p. 4.

place is via a home equity loan on his or her real estate. If property values are denigrated by allowing towers to be erected without control, the funds available to purchase commercial products, including the new HDTV, are concomitantly reduced.

The foregoing are the only specific conditions that the Association mentions in its *Comments*. It also references what it refers to as “a multitude of other details.”²⁴ Such details are worth noting since they will give the Commission an idea of the type of reasonable regulations that the City of Huntsville has imposed on broadcast service providers. One of the conditions requires that an applicant apply for the building permit with the appropriate documentation, including proof of compliance with applicable federal laws.²⁵ Another condition states that, if an applicant is proposing that a new broadcast tower be located in a residential district, such a tower owner must provide proof that it is necessary to do so.²⁶ Please note that the City of Huntsville is not preventing new broadcast transmission facilities from being located in residential districts. Residential districts are generally the most restrictive districts, and deservedly so, since they involve the quiet enjoyment of one’s home. A broadcast tower that rises several hundred feet in the air is a significant intrusion into such a district. Accordingly, it is not inappropriate to ask that a broadcast service tower intrude upon residential concerns only if necessary.

²⁴*Comments* at p. 3.

²⁵*Ordinance*, Section 73.20.17.

²⁶*Ordinance*, Section 92.5.3 (21) (e).

Another condition that the Association does not mention requires that towers comply with the minimum federal regulations for lighting.²⁷ Other conditions that are imposed by the Ordinance address important safety concerns such as site security, structural integrity of the tower, and preventative measures in the case of tower failure, i.e., setback requirements and a limitation on the proximity to other towers.²⁸ A functional concern is addressed in the requirement that the tower site have the appropriate access.²⁹ Signs cannot be placed on a tower and tower height is limited to the necessary minimum.³⁰ These are the “multitude of other details” that the Association did not mention. All are reasonable and capable of being met, and all accommodate the needs of broadcast service facilities while preserving local zoning concerns and protecting federal interests. Moreover, as the Commission will note, the Ordinance does not regulate tower siting based on interference or the effect of radio frequency emissions.

III. CONCLUSION

The *Alabama Broadcaster Association Comments* can cite to the Commission no specific examples of time delays, unreasonable denials, lengthy hearing processes, or extremely burdensome regulations. The only specific example given in its *Comments* is Huntsville’s zoning ordinance, which is not unreasonable, unduly burdensome, nor does it frustrate federal objectives. The Commission must undertake to balance the competing interests implicated by this issue. However,

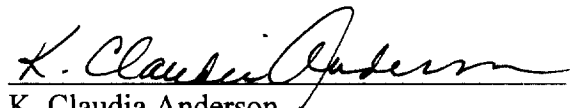
²⁷*Ordinance*, Section 92.5.3 (21) (f).

²⁸*Ordinance*, Section 73.20.6; Section 73.20.8; Section 92.5.3(c); Section 92.5.3(d).

²⁹*Ordinance*, Section 73.20.10.

³⁰*Ordinance*, Section 73.20.9; Section 92.5.3 (21) (f).

in weighing the costs versus the benefits, do not disregard the intangibles that are promoted through land use laws. Do not ask municipalities and its citizens to sacrifice essential quality of life issues as well as safety concerns when it is not absolutely necessary or legally mandated that they do so. Moreover, do not impose arbitrary time-deadlines in view of the significant due process concerns that arise in the zoning context. Finally, do not allow rapid deployment at the expense of safe deployment. Let the local government do what it was meant to do under the concept of federalism -- legislate issues of local concern that do not obstruct federal objectives. Zoning is a local concern. Regulating broadcast towers through zoning does not prevent rapid deployment; it ensures safe and reasonable deployment.




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(205) 532-7301

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon Alabama Broadcasters Association, by and through its attorneys of record, by placing a copy of same in the U. S. mail, postage prepaid and properly addressed as follows, on this the 26th day of November, 1997:

M. Scott Johnson, Esq.
Jocelyn R. Roy, Esq.
GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005



K. Claudia Anderson

ORDINANCE NO. 96-1008

AN ORDINANCE TO AMEND THE ZONING ORDINANCES OF THE
CITY OF HUNTSVILLE, ALABAMA

The public welfare requiring it, and under authority granted by Section 11-52-78 of the 1975 Code of Alabama, BE IT ORDAINED by the City Council for the City of Huntsville, Alabama, that the Zoning Ordinance of the City of Huntsville, Alabama, as adopted on the 21st day of March 1963, as amended, is hereby further amended as follows:

Section 1. Amend ARTICLE 3 - DEFINITIONS, Section 3.1 - Interpretation, by adding the following new definitions:

Amateur Radio Service Tower - A tower supporting only those antennas used for amateur radio service, for other non-revenue generating radio system services utilized strictly for personal use, public service, volunteer and community activities, and for receive-only antennas.

Antenna - A device used to transmit and/or receive radio frequency signals.

Broadcast Services - The transmission of television and radio programming to reach the general public. For the purposes of this ordinance, towers supporting VHF and UHF television and FM radio transmitting antennas shall be regulated as broadcast towers as shall any other towers that require an elevated site to broadcast programming to the general public. AM radio broadcast towers, which do not require elevated sites, exceptionally tall towers or line of sight transmission, shall be regulated as for mobile and fixed point radio service towers.

Commercial Mobile Radio Services - Encompasses those mobile services that are operated for profit, are connected to a telephone exchange network, and are available to the general public; includes services such as cellular telephone, personal communication services (PCS), specialized mobile radio (SMR), and paging.

DBS - Direct broadcast satellite services; a satellite system with sufficient power to allow small earth stations to be used for reception of compressed video signals.

Earth station - A facility that transmits and/or receives radio signals to and/or from a satellite.

FAA - Federal Aviation Administration.

FCC - Federal Communications Commission.

Fixed Point Radio Services - Encompasses non-mobile common carriers and multipoint distribution service operations that require fixed transmitting and receiving facilities, such as fixed point microwave and multipoint multichannel distribution services (MMDS).

Mobile Radio Services - A radio communication service that operates between mobile and fixed stations or between mobile stations. Mobile radio includes personal wireless services and private mobile radio services.

MMDS - Multichannel multipoint distribution services (also called wireless cable).

PCS - Personal communications services.

Personal Wireless Services - Includes commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined by the Federal Communications Commission.

Portable Tower, Mobile Tower or Truck Mounted Tower - Towers designed to be portable, whether or not the facility of which they are a part is permanently affixed to the ground, a building, or other permanent structure and utilized to supplement the service of a personal wireless service provider on a temporary basis.

Private Mobile Radio Services - Includes mobile radio services such as two-way radio used by public safety, special emergency, land transportation, and industrial radio service users.

Radio - Generic term referring to the communication of impulses, sounds and pictures through space by means of electromagnetic waves.

Transmitter - Equipment that generates radio signals for transmission via antenna.

TVBS - Television broadcast station.

Wireless Telecommunications - Any transmission or reception of signs, signals, writing, images, sounds, and/or data of any nature by means of the electromagnetic spectrum. Wireless telecommunications include but are not limited to cellular telephone, personal communication services (PCS), commercial and

private mobile radio, paging, public safety, fixed point microwave, amateur radio, radio and television broadcasting, satellite services such as direct broadcast satellite (DBS), and multichannel multipoint distribution services (MMDS).

Wireless Telecommunications Tower - A structure, such as a self-supporting lattice tower, a guyed tower, or a monopole, designed and constructed primarily for the purpose of supporting one or more antennas, which may include accessory facilities necessary for equipment storage and unmanned operations.

Section 2. Amend ARTICLE 20 - NEIGHBORHOOD BUSINESS C-1 DISTRICT REGULATIONS, Section 20.1 - Uses Permitted by amending the following uses:

Radio or television studios and transmitting facilities.

to read as follows:

Radio and television studios but not including broadcast towers.

Amend ARTICLE 21 - NEIGHBORHOOD BUSINESS C-1A DISTRICT REGULATIONS, Section 21.1 - Uses Permitted by amending the following uses:

Radio and television studios and transmitting facilities.

to read as follows:

Radio and television studios but not including broadcast towers.

Amend ARTICLE 24 - HIGHWAY BUSINESS C-4 DISTRICT REGULATIONS, Section 24.1 - Uses Permitted by amending the following uses:

Radio and television studios and transmitting facilities.

to read as follows:

Radio and television studios but not including broadcast towers.

Amend ARTICLE 43 - AIRPORT INDUSTRIAL PARK DISTRICT REGULATIONS, Section 43.1 - Uses Permitted by amending the following uses:

Heliport, nuclear reactor, radio or television broadcasting studios and transmitters and towers--provided such uses are in accordance with Section 43.7 hereof.

to read as follows:

Heliports and radio and television studios but not including broadcast towers--provided such uses are in accordance with Section 43.7 hereof.

Amend ARTICLE 50 - RESEARCH PARK DISTRICT REGULATIONS, Section 50.1 - Uses Permitted by amending the following uses:

Heliports, radio or television broadcasting studios and transmitters and towers--provided such uses are in accordance with Section 50.2 hereof.

to read as follows:

Heliports and radio and television studios but not including broadcast towers--provided such uses are in accordance with Section 50.2 hereof.

Amend ARTICLE 51 - RESEARCH PARK WEST DISTRICT REGULATIONS, Section 51.1 - Uses Permitted, by amending the following use:

Telecommunications.

to read as follows:

Telecommunications businesses, excluding radio and television studios.

Amend ARTICLE 52 - RESEARCH PARK APPLICATIONS DISTRICT REGULATIONS, Section 52.1 - Uses Permitted by amending the following uses:

Radio and television broadcasting.

to read as follows:

Radio and television studios but not including broadcast towers.

Section 3. Amend ARTICLE 73 - SUPPLEMENTARY REGULATIONS, Section 73.9 - Height Modifications, subsection 73.9.1 to read as follows:

- 73.9.1 Except as provided in Sections 73.9.2 and 73.20 hereof, the height limitations of this ordinance shall not apply to church spires, barns, silos, monuments, missiles, flag poles, antennas, penthouses and domes not used for human occupancy, nor to chimneys, water tanks, and necessary mechanical appurtenances usually carried above the roof level. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve and shall not exceed in cross-sectional area twenty percent (20%) of the ground floor area of the building.

Section 4. Amend ARTICLE 73 - SUPPLEMENTARY REGULATIONS, by adding new section 73.20 - Wireless Telecommunications Towers, to read as follows:

73.20 Wireless Telecommunications Towers

The regulations of this section are intended to provide for the growing need for telecommunications towers and antennas while minimizing any adverse environmental, aesthetic and visual impacts through careful design, siting, and landscape screening; to promote and encourage shared use (co-location) of existing and new towers and sites; to avoid potential damage to adjacent properties from tower failure or falling ice; to protect the health, safety and welfare of the general public; and to preserve the character of residential districts through judicious permitting of towers within such districts.

73.20.1 Applicability: Towers

Wireless telecommunications towers shall be permitted according to their function and location as provided herein:

(1) Towers in Non-residential Districts

AM radio broadcast towers, a tower erected primarily for the use of mobile or fixed point radio service antennas, or any other telecommunications tower not otherwise covered by Section 73.20.1 that will accommodate multiple users shall be permitted in non-residential zoning districts subject to these regulations and any other applicable codes and regulations.

(2) Single User Towers

A special exception shall be required to

construct AM radio broadcast towers, a tower erected primarily for the use of mobile or fixed point radio service antennas, or any other telecommunications tower not otherwise covered by Section 73.20.1 in any non-residential district if it will not be designed, constructed, and available to accommodate multiple users.

Tower applicants, except those for AM radio broadcast towers, must demonstrate an inability to locate on existing towers or other structures accompanied by supporting documentation as specified in Section 73.20.16 - Co-Location. (See Section 92.5.3(20) hereof.)

(3) Towers in Residential Districts

A special exception shall be required to locate or construct a tower erected for the support of personal wireless service antennas in any residential district. (See Section 92.5.3(9) hereof.)

(4) Broadcast Towers

A special exception shall be required to construct a broadcast tower in any district if it will support one or more UHF or VHF television or FM radio transmitting antennas or other broadcast antennas having similar elevation and height requirements. (See Section 92.5.3(21) hereof.)

(5) Existing Towers

All telecommunications towers existing on the effective date of this ordinance that have been lawfully erected shall be allowed to continue as non-conforming uses, provided they continue to meet or exceed current federal standards and regulations, as amended, and the provisions of Section 73.20.8 - Structural Design of Towers hereof. Such towers shall be permitted to accommodate additional antennas and any necessary new construction if such antennas and new construction do not increase the tower height beyond that allowed by the FCC or the FAA or by Sections 92.5.3(9)(e) or

73.20.7 - Tower Height or beyond the existing height if already in excess of the allowable height. Any new construction that would increase tower height or alter the structural strength or configuration of the tower will require the tower to be brought into compliance with the provisions of this ordinance except for Section 73.20.3 - Setbacks.

(6) Amateur Towers in Residential Districts

Amateur radio towers are permitted in any residential district subject to the following conditions:

- (a) One tower may be installed in the rear yard as an accessory structure to a licensed operator's legal residence, and all guy wires and anchors must be contained on the lot and may not extend closer than five feet to any boundary line of the lot.
- (b) The tower and antennas shall not exceed one hundred (100) feet in height.
- (c) Amateur radio towers shall be used exclusively for amateur radio antennas; for other non-revenue generating radio system antennas used strictly for personal use, public service, volunteer, and community activities; and for receive-only antennas. No amateur radio tower shall support any antenna being used for a revenue producing or business activity.
- (d) A building permit must be issued prior to installation of an amateur radio tower.

(7) Amateur Towers in Non-residential Districts

Amateur radio towers may be located in non-residential districts if they comply with Sections 73.20.3-Setbacks; 73.20.4-Lighting; 73.20.5-Color; 73.20.6-Site Security; 73.20.7-Height; 73.20.8-

Structural Design; 73.20.9-Signs;
7.20.10- Access; 73.20.11-Landscaping;
73.20.14-Abandonment; and 73.20.15-
Publicly Owned Property hereof and have
been issued a building permit.

(8) Portable or Mobile Towers

Portable or mobile towers may be utilized only for special, short term events attracting large numbers of people or for emergency situations; the provider must be issued a temporary use permit by the Building Inspector prior to siting of the portable facility, and the permit must specify the permitted location and the permitted dates of operation not to exceed ten days. The Building Inspector shall collect a \$100 application fee each time a portable tower is permitted for a period not to exceed ten days.

(9) Accessory Towers

A tower that is accessory to a business or other non-residential entity on the same lot in a non-residential district and that is for the exclusive use of the principal entity, its branches and its employees shall:

- (a) not exceed one hundred (100) feet in height,
- (b) not be permitted to carry other transmitting antennas,
- (c) have all guy anchors located at least ten (10) feet inside the lot lines, and
- (d) have been issued a building permit prior to installation.

73.20.2 Applicability: Antennas

Except for replacements of preexisting antennas that neither alter height, configuration or structural integrity of the support structure nor increase radio frequency emissions, all telecommunications antennas installed following

adoption of this ordinance shall comply with one of the following provisions:

- (1) Tower supported antennas that will be attached to existing, lawfully erected, towers shall be issued building and other required permits prior to installation subject to compliance with subsections 73.20.8(2) and 73.20.17(9) hereof.
- (2) Building or ground mounted antennas shall comply with the provisions of Section 73.20.12 - Antennas hereof.

73.20.3 Setbacks

- (1) The minimum setback for a tower shall be twenty-five percent (25%) of the tower height unless a greater setback is required by the regulations for the district in which the tower is located; however, no tower shall be located closer than two hundred feet (200') to any residential district nor closer than a distance equal to the height of the tower to any residential structure.
- (2) Towers located on the leased portion of a larger lot shall not be constructed in any required yard of the lot; towers shall not be located on the same lot with a residential structure.
- (3) Tower setbacks from the property lines of the lot on which the tower is located shall be measured from the perimeter of the tower base.
- (4) Guyed towers shall have their guy anchors located on the tower site at least ten feet from any lot line, and guy wires shall not cross any adjoining property, rights-of-way or public easements without prior approval of the owner of the public easement.
- (5) Setbacks shall in all cases be sufficient to contain on site all ice-fall unless adequate provisions have been incorporated to prevent the buildup of ice.
- (6) Minimum setbacks for accessory structures

constructed in conjunction with a tower shall be as established by the zoning district for principal buildings or be at least twenty-five feet (25') if no setback is required by the district.

73.20.4 Lighting

- (1) Towers shall not be artificially illuminated except as required by the Federal Aviation Administration or the Federal Communications Commission. Any required lighting shall be the minimum necessary to comply with federal regulations.
- (2) All security lighting must be contained within the fenced area and must not illuminate higher than ten feet.

73.20.5 Tower Color

Towers shall have a galvanized finish or be painted a silver, pale blue or gray; any regulation of the FAA or FCC that contradicts this requirement shall govern.

73.20.6 Site Security

The facility shall be fully secured. A chain link fence or a wall not less than eight (8) feet in height from finished grade shall be provided around each tower and all accessory structures. Access to the tower shall be through a locked gate. Where guy anchors are not contained within the security fence, a separate fence at least eight feet (8') in height shall be provided around each anchor. Towers without accessory structures may utilize anti-climb devices in place of a fence.

73.20.7 Tower Height

- (1) Towers in C-1 through C-3 districts shall not exceed 120 feet in height; towers in other non-residential districts shall not exceed one hundred eighty (180) feet in height.
- (2) Measurement of tower height shall include antennas, base pad, and other appurtenances

and shall be measured from the natural grade of the site.

73.20.8 Structural Design of Towers

- (1) Towers shall meet or exceed the structural requirements as set out in EIA/TIA-222-E "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures," as amended, published by the Electronic Industries Association and all applicable City of Huntsville building codes.
- (2) Any improvements and/or additions (antennas, dishes, etc.), excluding the repair and replacement of parts or components that do not increase tower height or alter the structural strength or configuration of the tower, to existing towers shall require that a notarized verification of compliance with the EIA/TIA-222-E Standards in effect at the time of the improvement or addition be submitted to the Building Inspector by the owner and a registered professional engineer.
- (3) Commercial towers 180 feet in height or less, except for accessory towers as described in Section 73.20.1(9), shall be monopoles unless the applicant can demonstrate that the specific conditions require another tower type.
- (4) Tower diameter at the base shall not be greater than required for the permitted tower height.

73.20.9 Signs

No signs shall be allowed on any tower or antenna.

73.20.10 Access

- (1) Where the lot on which a tower is to be erected does not meet the minimum lot area requirement for the zoning district or does not have frontage on the public road from which it derives access, then building permits shall not be issued for any

structures other than telecommunications towers and the unmanned accessory facilities required for equipment storage and tower operation. This use restriction must be made a part of any plat or deed describing this lot until such time as the lot comes into compliance with the zoning regulations.

- (2) Whenever a tower site does not have frontage on the public street from which it derives access, a permanent, twenty-foot (20') wide access easement shall be required.

73.20.11 Landscaping

A landscape buffer shall be required in all districts and shall effectively screen the view of the tower facility from public ways and adjacent properties.

- (1) The buffer shall be installed on the outside of the security fence.
- (2) The buffer shall consist of a minimum ten-foot (10') wide landscaped strip planted with an attractive combination of trees, shrubs, vines and/or ground covers.
- (3) Minimum required plantings include:
 - (a) A row of evergreen trees a minimum of eight feet tall when planted placed a maximum of ten feet apart;
 - (b) A continuous hedge of evergreen shrubs at least thirty inches high at planting placed in front of the tree line; and
 - (c) All plant materials shall be xeriscape tolerant.
- (4) Where towers are located on wooded sites:
 - (a) Tree cutting shall be limited to the area to be fenced and a five-foot (5') buffer along the outside of the fence. If the accessway must be cleared of trees, then tree cutting shall be

limited to the minimum width necessary to provide vehicular access to the tower facility but shall not exceed fifteen feet (15') in width.

- (b) Preservation of the natural vegetation surrounding the fenced area shall be substituted for the landscape buffer if it screens the compound from view from adjacent development and rights-of-way.
- (5) All landscaping must be installed in accordance with the provisions of Section 73.19 - Installation of Landscaping.
- (6) The owner of the tower shall be responsible for providing and maintaining all landscaping in a healthy and growing condition and replacing unhealthy or dead plants by the next growing season with plants that conform to the original intent of these regulations for as long as the tower stands.

73.20.12 Antennas

- (1) Non-residential districts: An antenna that is not attached to a tower shall be permitted on non-residential structures or be ground mounted provided:
 - (a) The antenna and its supporting structure, when attached to a non-residential structure, do not exceed twenty feet (20') in height;
 - (b) The antenna complies with all applicable FCC and FAA regulations;
 - (c) The antenna does not extend into the air space above any public right-of-way nor extend any closer than ten (10) feet to the boundary of the lot on which the structure is located;
 - (d) The support structure for the antenna and any facilities or equipment necessary for its operation comply with all applicable building codes and have received appropriate permits;

- (e) The antenna will be, and will remain, in compliance with current FCC standards concerning radio frequency emissions;
 - (f) The antenna site is not within the boundaries of a National Register historic district; and
 - (g) Satellite earth station antennas having a diameter greater than two meters, and DBS and MMDS antennas having a diameter greater than one meter:
 - (i) if attached to a building are placed to minimize their visibility from adjacent streets, or
 - (ii) if ground mounted meet required yard setbacks or have a setback of ten feet from lot lines if no setbacks are specified for the district, and
 - (iii) are not located in front yards unless visually screened from public rights of way.
- (2) Residential districts: An antenna that is not attached to a tower shall be permitted under the following conditions:
- (a) Personal wireless service antennas shall be permitted on principal, non-residential structures provided the antenna is in compliance with conditions (a) through (f) of Section 73.20.12(1) above.
 - (b) Satellite dishes, DBS, and MMDS receiving antennas having a diameter greater than one meter shall:
 - (i) be regulated as accessory structures,
 - (ii) be approved by the Huntsville Historic Preservation Commission if located in a National